

**ATTORNEY DOCKET NUMBER: 2004367-0031**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant:	Winterbottom <i>et al.</i>	Examiner:	Davis, Ruth
Serial No.:	10/735,135	Art Unit:	1651
Filed:	December 12, 2003		
Title:	FORMABLE AND SETTABLE POLYMER BONE COMPOSITE AND METHOD OF PRODUCTION THEREOF		

Mail Stop: AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**DECLARATION UNDER 37 C.F.R. § 1.132**

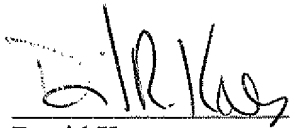
I, David Kaes, of Toms River, New Jersey, declare as follows:

1. I am Associate Engineer at Osteotech, Inc. and am an inventor of the subject matter disclosed and claimed in United States patent application Serial No. 10/735,135, filed December 12, 2003, and entitled "FORMABLE AND SETTABLE POLYMER BONE COMPOSITE AND METHOD OF PRODUCTION THEREOF".
2. This Declaration is presented for the purpose of removing from consideration by the Examiner a reference by Boyce *et al.*, entitled "Osteogenic Implants Derived from Bone," U.S. patent application Serial No. 09/973,597, filed October 9, 2001 (the '597 application). The present Declaration is presented in accordance with *In re Katz*, 687 F.2d 450, 215 USPQ 14 (CCPA 1982) and establishes that the allegedly anticipatory material in the '597 application was not invented by another.
3. I am an inventor on the instant application and am also an inventor on the '597 application.

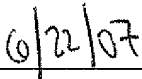
4. John Winterbottom is the other co-inventor on the present application. Winterbottom is not an inventor of the '597 application.

5. Todd M. Boyce and Nelson L. Scarborough are the other co-inventors on the '597 application. Boyce and Scarborough are not inventors of the claimed invention in the present application. Boyce and Scarborough were collaborators on certain aspects of the claimed invention in the '597 application; however, they did not contribute to the claimed invention of the present application.

6. I, David Kaes, declare that all statements made herein of my own knowledge are true and that these statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful, false statements and the like are made punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code and that such willful, false statements may jeopardize the validity of the application or any patents that may issue thereon.



\_\_\_\_\_  
David Kaes



\_\_\_\_\_  
Date